

BUREAU OF AUTOMOTIVE REPAIR

FINAL STATEMENT OF REASONS

Hearing Dates: October 30, 2002

**Subject Matter of
Proposed Regulations:** Definitions, "Clean Piping"

Section Affected: § 3340.1, Title 16, Division 33, Chapter 1, Article
5.5, California Code of Regulations

Updated Information:

The Initial Statement of Reasons is included in the file. The information contained therein is updated as follows:

The proposed regulatory action would add a specific definition for "clean piping" to Section 3340.1, as contemplated in Health and Safety Code section 44072.10(c)(1). This statutory provision (§ 44072.10(c)(1)) appears to suggest that the Bureau is directed to define the term "clean piping." Therefore, the Bureau proposes to define the subject term in order to clarify its meaning, standardize its usage and comply with the provisions of Health and Safety Code section 44072.10(c)(1).

Section 44072.10 of the Health and Safety Code provides, in pertinent part, that the department shall revoke the license of any smog check station licensee or smog check technician who fraudulently certifies or participates in the fraudulent certification of vehicles. Section 44072.10 also specifies that fraudulent certification includes "clean piping, as defined by the department." There is no formal definition of the term "clean piping" in statute or regulation, and Section 44072.10(c)(1) has been interpreted to require the Bureau to formally define the term "clean piping."

As originally published, the informative digest and proposed text made reference to Health and Safety Code Section 44072.10(**d**)(1) which was correct according to a prior version of that Section. However, Section 44072.10 was amended in 2001 (Chapter 357, Statutes of 2001) and prior subsection (**d**) became subsection (**c**). Subsequently, the Bureau has revised the text of the proposed action to accurately reference the underlying statute and to conform to the legislative amendment. This modification of text is directly and substantially related to the initial proposal and has no regulatory effect within the meaning of Section 100 of Title 1 of the California Code of Regulations.

Objections or Recommendations/Responses:

The following comments/objections/recommendations were made, either in writing or orally at the public hearings, regarding the proposed action:

1. Larry G. Armstrong, President, Side B Corporation d.b.a. Quality Tune-Up Shops, in a letter dated October 31, 2002 and received November 1, 2002, offered the following:

- a. Section 44072.10 of [the Health and Safety] Code provides, in pertinent part, that the department shall revoke the license of any smog check station licensee or smog check technician who fraudulently certifies or participates in the fraudulent certification of vehicles. This provision makes no differentiation between a licensee who might be a willing participant in fraudulent activity and a licensee who could be a victim of the fraudulent activities of an employee. The State of California needs to differentiate between intentional activity and the non-detection of the illegal activities of another.

This comment/recommendation was rejected because:

This comment is outside the scope of, and not germane to the proposed action to simply adopt a definition for the term “clean piping,” as provided in Section 44072.10(c)(1) of the Health and Safety Code.

Local Mandate:

A mandate is not imposed on local agencies or school districts.

Business Impact:

This action will not have a significant adverse economic impact on businesses.

Specific Technologies or Equipment:

The proposed action does not mandate the use of specific technologies or equipment.

Consideration of Alternatives:

No reasonable alternative which was considered or that has otherwise been identified and brought to the attention of the Bureau would be either more effective in carrying out the purpose for which the action is proposed or would be as effective and less burdensome to affected private persons than the proposed regulation.